

SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2560—RULES AND REGULA- TIONS FOR ADMINISTRATION AND ENFORCEMENT

Sec.

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2560.503-1 Claims procedure.

AUTHORITY: 29 U.S.C. 1132, 1135, 1194 and
Secretary's Order 1-87, 52 FR 13139 (April 21,
1987).

Section 2560.502-1 also issued under 29
U.S.C. 1132(b)(2).

Section 2560.502i-1 also issued under 29
U.S.C. 1132(i).

Section 2560.503-1 also issued under 29
U.S.C. 1133.

§ 2560.502-1 Requests for enforcement pursuant to section 502(b)(2).

(a) *Form, content and filing.* All re-
quests by participants, beneficiaries,
and fiduciaries for the Secretary of
Labor to exercise his enforcement au-
thority pursuant to section 502(a)(5), 29
U.S.C. 1132(a)(5), with respect to a vi-
olation of, or the enforcement of, parts
2 and 3 of title I of the Employee Re-
tirement Income Security Act of 1974
(the Act) shall be in writing and shall
contain information sufficient to form
a basis for identifying the participant,
beneficiary, or fiduciary and the plan
involved. All such requests shall be
considered filed if they are directed to
and received by any office or official of
the Department of Labor or referred to
and received by any such office or offi-
cial by any party to whom such writing
is directed.

(b) *Consideration.* The Secretary of
Labor retains discretion to determine
whether any enforcement proceeding
should be commenced in the case of
any request received pursuant to para-
graph (a) of this section, and he may,
but shall not be required to, exercise
his authority pursuant to section

502(a)(5) of the Act only if he deter-
mines that such violation affects, or
such enforcement is necessary to pro-
tect claims of participants or bene-
ficiaries to benefits under the plan.

[43 FR 50175, Oct. 27, 1978]

§ 2560.502c-2 Civil penalties under sec- tion 502(c)(2).

(a) *In general.* (1) Pursuant to the au-
thority granted the Secretary under
section 502(c)(2) of the Employee Re-
tirement Income Security Act of 1974,
as amended (the Act), the adminis-
trator (within the meaning of section
3(16)(A)) of an employee benefit plan
(within the meaning of section 3(3) and
§2510.3-1, *et seq.*) for which an annual
report is required to be filed under sec-
tion 101(b)(4) shall be liable for civil
penalties assessed by the Secretary
under section 502(c)(2) of the Act in
each case in which there is a failure or
refusal to file the annual report re-
quired to be filed under section
101(b)(4).

(2) For purposes of this section, a
failure or refusal to file the annual re-
port required to be filed under section
101(b)(4) shall mean a failure or refusal
to file, in whole or in part, that infor-
mation described in section 103 and
§2520.103-1, *et seq.*, on behalf of the plan
at the time and in the manner pre-
scribed therefor.

(b) *Amount assessed.* (1) The amount
assessed under section 502(c)(2) shall be
determined by the Department of
Labor, taking into consideration the
degree or willfulness of the failure to
file the annual report. However, the
amount assessed under section 502(c)(2)
of the Act shall not exceed \$1,000 a day,
computed from the date of the admin-
istrator's failure or refusal to file the
annual report and, except as provided
in paragraph (b)(2) of this section, con-
tinuing up to the date on which an an-
nual report satisfactory to the Sec-
retary is filed.

(2) If upon receipt of a notice of in-
tent to assess a penalty (as described in

paragraph (c) of this section) the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the annual report shall be the date on which the annual report was due (determined without regard to any extension for filing). An annual report which is rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file an annual report when a revised report satisfactory to the Department is not filed within 45 days of the date of the Department's notice of rejection.

A penalty shall not be assessed under section 502(c)(2) for any day earlier than the day after the date of an administrator's failure or refusal to file the annual report if a revised filing satisfactory to the Department is not submitted within 45 days of the date of the notice of rejection by the Department.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(2), the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(2), the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(2) on a showing by the administrator that there was reasonable cause for the failure to file the annual report.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice, as described in paragraph (i) of this section, to file a statement of reasonable cause for the failure to file a complete an-

nual report or why the penalty, as calculated, should not be assessed. A showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.61(g).

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to this paragraph indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.61(g), 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.61(g), if, within 30 days from the date of service of the notice, an answer, as defined in § 2570.61(c), is filed in accordance with § 2570.62.

(i) *Service of notice.* (1) Service of notice shall be made either:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of

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the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(2) pursuant to a final order, within the meaning of § 2570.61(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.60 through 2570.71 of this chapter for procedural rules relating to administrative hearings under section 502(c)(2) of the Act.

[54 FR 26894, June 26, 1989]

§ 2560.502c-5 Civil penalties under section 502(c)(5).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 Pub.L. 93-406, 88 Stat. 840-52, as amended by Pub. L. 104-191, 101 Stat. 1936 (the Act), the administrator of a multiple employer welfare arrangement (MEWA) (within the meaning of section 3(40)(A) of the Act) that is not a group health plan, and that provides benefits consisting of medical care (within the meaning of section 733(a)(2)), for which a report is required to be filed under section 101(g){h} of the Act and § 2520.101-2, shall be liable for civil penalties assessed by the Secretary under section 502(c)(5) of the Act for each failure or refusal to file a completed report required to be filed under section 101(g){h} and § 2520.101-2. The term “administrator” is defined in § 2520.101-2(b).

(2) For purposes of this section, a failure or refusal to file the report required to be filed under section 101(g){h} shall mean a failure or refusal to file, in whole or in part, that information described in section 101(g){h}

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and § 2520.101-2, on behalf of the MEWA, at the time and in the manner prescribed therefor.

(b) *Amount assessed.*—(1) The amount assessed under section 502(c)(5) shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure to file the report. However, the amount assessed under section 502(c)(5) of the Act shall not exceed \$1,000 a day, computed from the date of the administrator’s failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g){h} and § 2520.101-2, as determined by the Secretary, is filed.

(2) If, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section), the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the report shall be the date on which the report was due (determined without regard to any extension of time for filing). A report which is rejected under § 2520.101-2 shall be treated as a failure to file a report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department’s notice of rejection. If a revised report meeting the requirements of this section, as determined by the Secretary, is not submitted within 45 days of the date of the notice of rejection by the Department, a penalty shall be assessed under section 502(c)(5) beginning on the day after the date of the administrator’s failure or refusal to file the report.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(5), the Department shall provide to the administrator of